

## **Article 22, Inclusionary Zoning Frequently Asked Questions**

### **What do we mean by “Affordable Housing”?**

Under current zoning, Affordable Housing refers to housing that is affordable to households in two categories: Low Income (80% or less of Area Median Income) and Moderate Income (from 80% up to 120% of AMI). Article 23 would reduce the maximum Moderate Income limit to 95% of AMI. To be considered affordable, housing cost must not exceed 30% of a household's income.

### **2014 HUD Income Limits (Household of 4) for Amherst**

80% AMI	\$63,900
95% AMI	\$75,900

### **Amherst already has an inclusionary zoning bylaw - why change it?**

The current bylaw was adopted 10 years ago and has yielded only six units, which have been approved but not yet built. Article 22 would require affordable housing in more types of developments, and provide cost offsets to ensure that developments with affordable housing are actually built.

### **Will adopting Article 22 meet Amherst's affordable housing needs? What about very-low-income households?**

Article 22 is just one of many tools to assist in the creation of affordable housing. To create very low income housing, to preserve existing affordable housing, and undertake new affordable housing projects, Amherst will need to use other tools—tax incentives under Article 21, CDBG block grant funding, Community Preservation Act (CPA) funds, and the newly-created Affordable Housing Trust. Funds could be used, for instance, to “buy down” the affordability of units created through inclusionary zoning, making them available to lower income households.

### **Will Article 22 work without the tax incentives contained in Article 21?**

In exchange for the 10% affordability requirement and to make the resulting developments more economically viable, Article 22 contains cost offsets which include increased height, floors, and lot coverage, among other things. Even without tax incentives, Article 22 is a substantial improvement over the current bylaw, which has not resulted in the construction of any affordable housing units.

### **Why don't we just require developers to provide affordable housing? Why do we have to give them incentives or extra market rate units?**

There are practical and legal reasons why Amherst's approach to inclusionary zoning must include incentives as well as a mandate. First, making a home or apartment affordable

changes the profit margin on the sale or rental of that unit, which in turn affects the willingness of a bank or investor to provide financing to build that unit. If inclusionary zoning regulations make a development project too financially risky, it probably won't be built, and the affordable units that could have been a part of that development would be lost. Offering additional market rate units beyond what would otherwise be allowed helps make up for the cost of the affordable units and encourages investment in housing.

Second, the U.S. Constitution prohibits the "taking" of private property for public use without just compensation. Unless the community offers incentives that dependably allow developers to break even on the cost of development, imposing the inclusionary requirements on by-right uses could make the community vulnerable to lawsuits for an illegal "taking" of property value.

**This seems to be giving a lot away to developers. What are the citizens of Amherst getting in return?**

An increased supply of affordable housing, a high priority of the community.

**Doesn't Article 22 change dimensional limits and requirements?**

Yes and no. The basic project, including the affordable units, must conform to current dimensional requirements. However, the "cost offset" units that make the affordable units financially feasible have to go somewhere, so some dimensional regulations would be modified to allow those units to fit on the original parcel, along with the basic project. The dimensional modifications would apply to the number of units per building, building coverage, lot coverage, height, or floors. Changes to front, side, or rear setbacks would require a Special Permit.

**Why are the dimensional changes automatic instead of discretionary?**

In order for the "cost offset" units to be real compensation for the required affordable units, a developer has to know that they will be allowed and can be accommodated. Automatic adjustments to dimensional limits – only when affordable units are included – provide the necessary assurance.

**Won't Article 22's dimensional changes lead to dense development and tall buildings in residential neighborhoods?**

Unlikely. Article 22 will not make development with affordable units any cheaper or more attractive, just financially feasible. More importantly, the density of development is limited by the kinds of residential buildings allowed in a zoning district, which is not changing. In the R-N, R-O, and R-LD Districts, for instance, the only multi-family uses permitted in normal development are duplexes and converted dwellings. Most inclusionary development in those outlying districts will consist of duplexes in cluster developments, and duplexes will not need most of the dimensional modifications that Article 22 offers. In those outlying districts, townhouses and apartments can occur only in Planned Unit Residential Developments (PURDs) and Open Space Community Developments (OSCDs), which require a lot of land and are expensive and difficult to pursue. The dimensional modifications would be needed in a PURD or OSCD, and in other districts.

### **What is happening to footnote *m*?**

Footnote *m* applies to townhouse and apartment developments in the General Residence (R-G) District and has the effect of reducing the underlying density for those kinds of multi-family developments. It does this by increasing the requirement for additional lot area/family from 2,500 sq. ft. to 4,000 sq. ft. for each unit beyond the first. Under footnote *m*, a property would have to be bigger than an acre (1.06 acres, or 46,000 sq. ft.) before an inclusionary project could occur at all—inclusionary zoning is triggered at ten units. Under Article 22, applying the standard requirement to inclusionary projects will make it possible for affordable multi-family projects to occur on properties of slightly over 3/4s of an acre (0.76 acres). Applying footnote *m* to inclusionary projects would have the effect of keeping most residential development dense enough to include affordable units out of the R-G District.

### **Won't allowing off-site provision of affordable units increase segregation and violate Fair Housing laws?**

Off-site units are only possible when half of the affordable units required in a project are provided on-site, meaning that affordable housing would be distributed in at least two different locations. In addition, off-site units would be considered only in the General Business (B-G) and abutting Limited Business (B-L) districts – i.e., downtown, where convenient access to jobs, shopping, services, and public transit makes affordable housing particularly desirable. By making inclusionary zoning more flexible downtown, Article 22 increases the likelihood that affordable units will be created where they would be most beneficial. Any off-site provision of some affordable units would require a Special Permit. Applicants would have to provide mapped evidence of the locations of other existing affordable housing, to give the permit granting authority the information needed to ensure adequate dispersal and avoid creating concentrations of affordable units.

### **Why are conventional subdivisions exempted in Article 22?**

Conventional subdivisions are regulated under a different state law than zoning, and are a by-right development option more broadly protected than other kinds of development.

Conventional subdivisions should be required to provide affordable housing just like any other development, but the mechanisms for making that possible in Amherst would be too complex to include in what is already a major overhaul of our inclusionary zoning bylaw. The Planning Board will need to tackle that job in a much-needed revision of the town's Subdivision Regulations.

### **Why are some uses in the R-F District exempted in Article 22?**

The uses exempted in the Fraternity Residence (R-F) district are fraternities, sororities, social dormitories, and similar uses related to the University or colleges. These are the *only* uses allowed in the R-F district (though some exist under grandfathering elsewhere) and they are uses specifically intended to provide housing for large numbers of students in places away from residential neighborhoods. It would not make sense to discourage these uses by imposing an inclusionary requirement on them, making them less likely to be built and thereby

negating the purpose of this district. Additionally, because they can be considered congregate housing and seasonal, such uses can be difficult or impossible to have counted on Amherst's Subsidized Housing Inventory.

**How will Article 22 impact Amherst's percentage of affordable housing, as it relates to the 10% requirement in MGL Chapter 40B?**

Article 22 will apply only to new developments of 10 units or more, and will not by itself keep Amherst's affordable housing stock above the state-mandated 10% of total housing. Amherst has been able to remain above that percentage through many different coordinated multi-year efforts that brought together multiple funding sources, developers, and other parties.

Preserving existing affordable housing is as important as creating new affordable housing. The inclusionary zoning made possible through adoption of Article 22 will be one of the important ways in which the Amherst continues to increase and maintain its affordable housing and ensure its diversity and vitality.



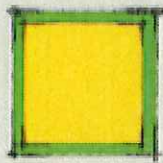
# Article 22

## Coverage Changes Illustrated

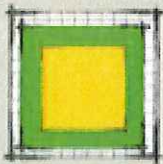
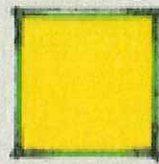
### Business Districts

Current

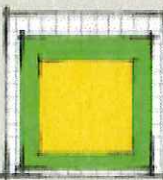
Article 22



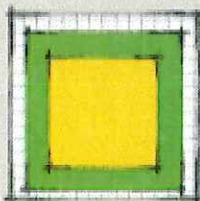
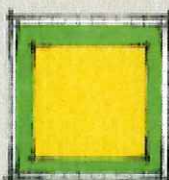
B-G



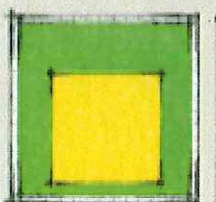
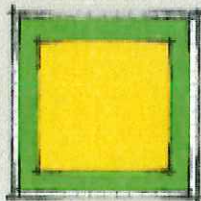
B-VC



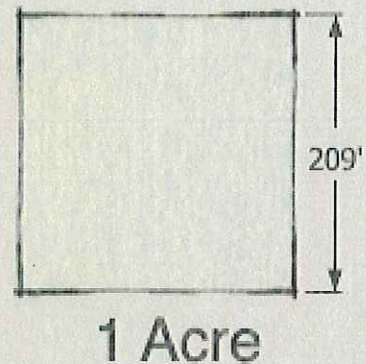
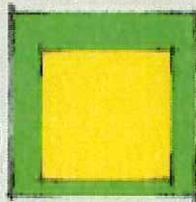
B-N




B-L/COM




B-L/COM  
(abutting B-G)



 Max. Lot Coverage

 Max. Build Coverage

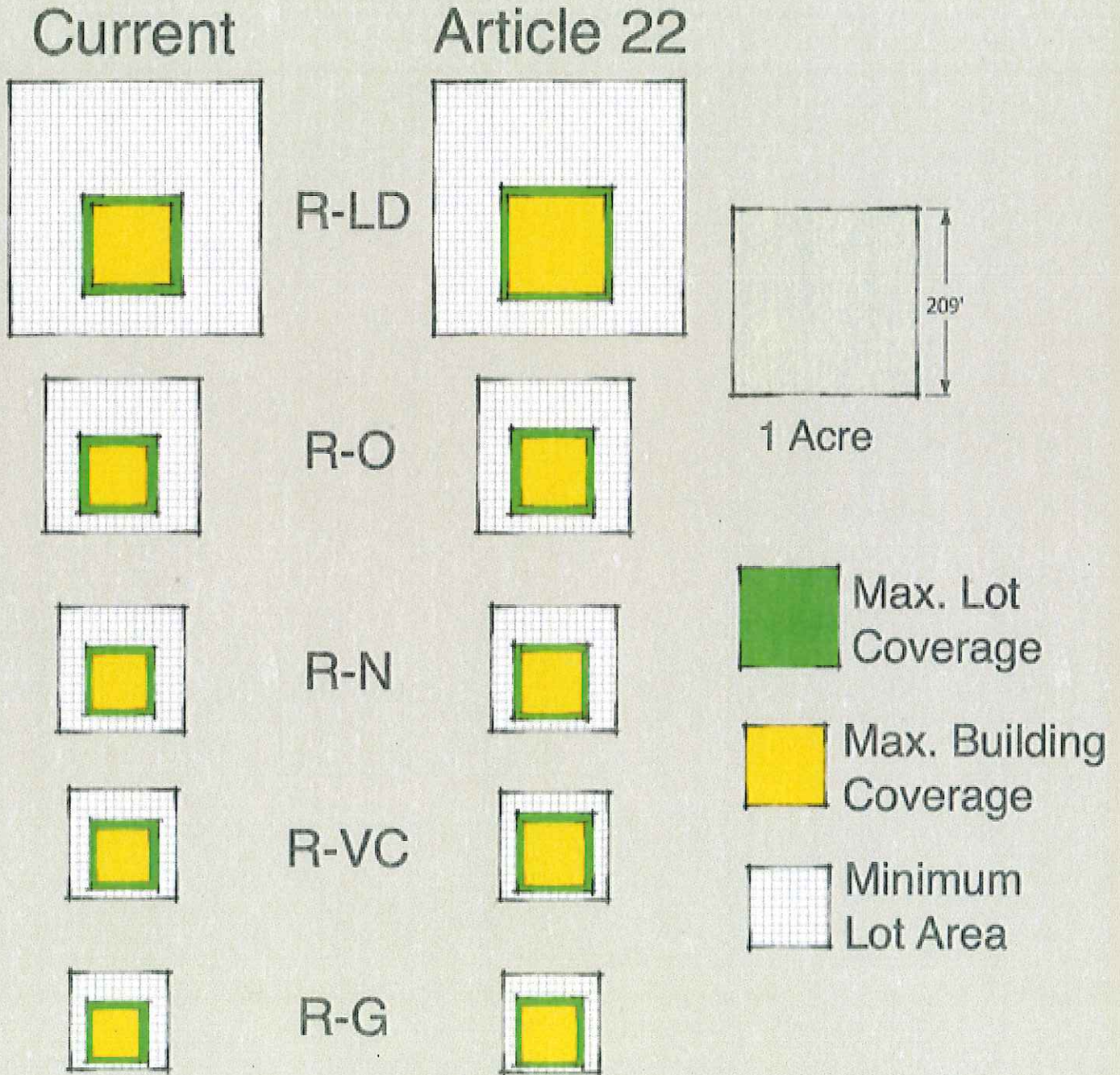
 Minimum Lot Area



# Article 22

## Coverage Changes Illustrated

### Residential Districts

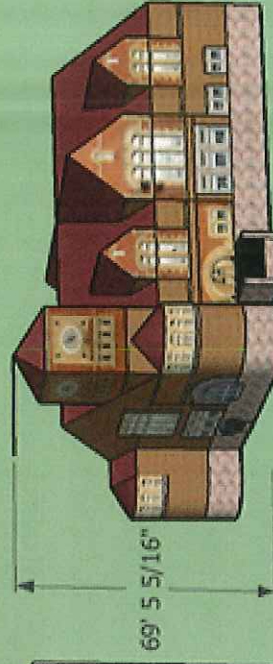
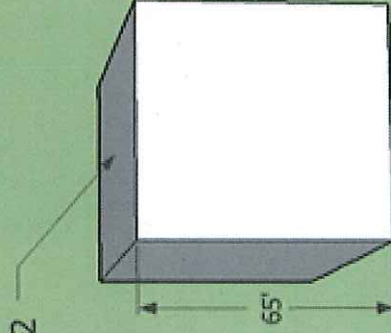
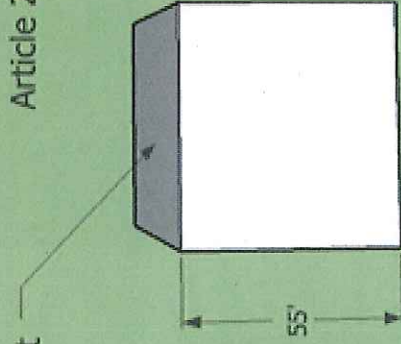
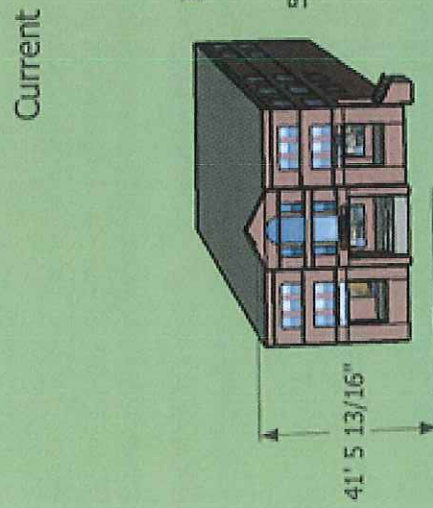




# Article 22

## Height Changes Illustrated

### B-G District

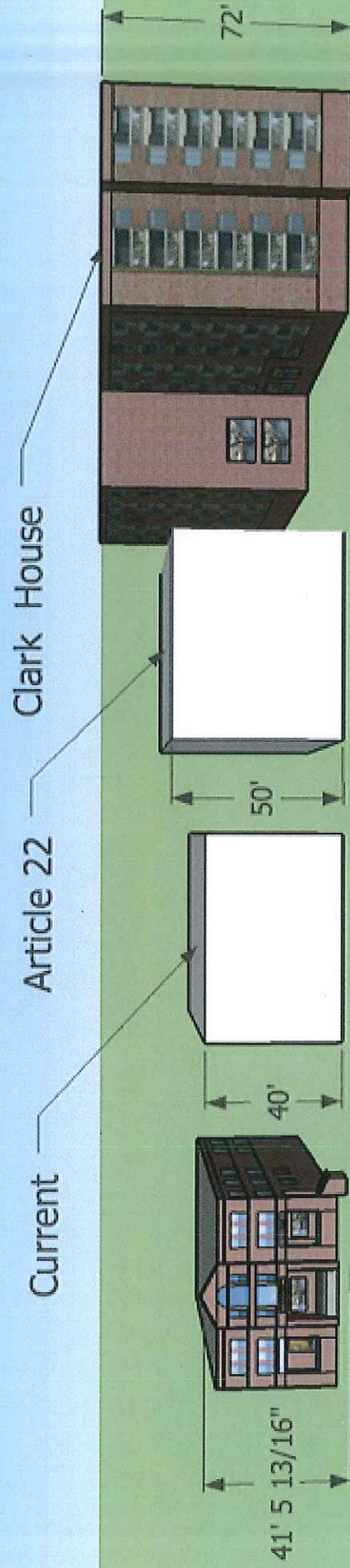


# Article 22

## Height Changes Illustrated

### R-G, B-VC, B-N Districts

(Height only - change in max. stories varies)





# Article 22

Height Changes Illustrated  
R-LD, R-O, R-N, R-VC, B-L, COM  
(Height only - change in max. stories varies)

1190 North Pleasant St

